



# MARINE MAMMAL AUTHORIZATION PROGRAM

## The 1994 Amendments to the Marine Mammal Protection Act: Requirements for Commercial Fishers

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Under the 1994 amendments to the Marine Mammal Protection Act (MMPA), there have been a number of changes in the regulations governing the incidental taking of marine mammals in the course of commercial fishing operations, such as:

- seven-year goal for reducing incidental serious injury and mortality of marine mammals to insignificant levels approaching a zero mortality and serious injury rate
- simplified registration process for certain fisheries
- new criteria for Category I, II, and III fisheries
- reporting only when a marine mammal has been injured or killed
- prohibition against intentionally lethally taking marine mammals
- mechanism for issuing permits to incidentally take endangered and threatened marine mammals
- authority to place observers on vessels in any Category I or II fishery
- establishment of take reduction teams and development of take reduction plans for certain fisheries

The purpose of the Marine Mammal Authorization Program (MMAP) is to provide an exemption for commercial fishers from the general taking prohibitions of the MMPA. This program replaces the Interim Exemption for Commercial Fishing, in effect from 1989 to August 1995. Information on marine mammal interactions with commercial fishers collected under this program, as well as other sources, will provide the basis for determining whether the incidental serious injury and mortality of marine mammals in commercial fishing operations has been reduced to insignificant levels approaching a zero mortality and serious injury rate by April 30, 2001.

### WHO NEEDS TO REGISTER?

As of March 1, 1996, the owner of a vessel or non-vessel gear engaging in a Category I or II fishery must obtain a marine mammal authorization from the National Marine Fisheries Service (NMFS), or its designated agent, in order to lawfully incidentally take a marine mammal in a commercial fishery. The fee for obtaining a new or renewed authorization each year is \$25, unless otherwise specified in the list of fisheries published annually by NMFS. Upon receipt of a completed registration, vessel

owners will be issued a decal to display on their vessel, and an authorization certificate to be in the possession of the operator while fishing. Owners of vessels or non-vessel gear in Category III fisheries may incidentally take marine mammals without registering for or receiving an authorization.

### WHAT IS A CATEGORY I, II, OR III FISHERY?

The MMPA requires all commercial fisheries to be placed in one of three categories, based on the relative frequency of incidental serious injuries and mortalities of marine mammals in each fishery. Category I designates fisheries with frequent serious injuries and mortalities incidental to commercial fishing; Category II designates fisheries with occasional serious injuries and mortalities; Category III designates fisheries with a remote likelihood or no known serious injuries or mortalities. Regulations to implement the 1994 amendments to the MMPA established new criteria for defining "frequent", "occasional", and "remote likelihood", based on the impact of fishery-related serious injuries and mortalities on each marine mammal stock. Every year, NMFS reviews and revises its list of Category I, II, and III fisheries based on new information. Consequently, the requirement to register with NMFS may change from one year to the next. Changes to the list of fisheries will be broadly publicized each year.

### HOW ARE MARINE MAMMAL AUTHORIZATIONS OBTAINED?

NMFS, or its designated agent, makes every effort to mail all vessel owners that may participate in Category I or II fisheries a registration or renewal package by January 1 of each year. NMFS recommends that completed registration forms be submitted at least 30 days in advance of fishing. Vessel owners must have a valid authorization certificate in hand before resumption of fishing each calendar year. In certain fisheries, registration for a marine mammal authorization may be coordinated with existing state or Federal fishery or vessel permit or licensing programs. If applicable, vessel owners will be notified of this simplified registration process when they apply for their state or Federal permit or license. As of 1998, this simplified registration process was in place for vessel owners

participating in Washington, Oregon, and Alaska, the Gulf of Maine, U.S. Mid-Atlantic Lobster trap/pot fishery, the Atlantic squid, mackerel, butterflyfish trawl fishery, and the NE multi-species sink gillnet fisheries (see insert).

NMFS hopes to have this form of “one-stop-permitting” available to all vessel owners in the future.

### **ARE LOGBOOKS STILL REQUIRED?**

The MMPA no longer requires vessel owners to submit marine mammal logbooks detailing each day’s fishing activity. However, all vessel owners or operators, regardless of the category of fishery they participate in, must report all incidental injuries and mortalities of marine mammals that have occurred as a result of commercial fishing operations. Reports must be sent to NMFS, by mail or fax, within 48 hours of the end of a fishing trip in which the injury or mortality occurred, or, for non-vessel fisheries, within 48 hours of the occurrence.

NMFS will provide postage-paid reporting forms to Category I and II vessel owners with their new or renewed authorization certificates each year. NMFS will also provide major ports and marinas with a supply of postage-paid reporting forms in the near future. Failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip (or within 48 hours of an occurrence of an incidental injury or mortality in a non-vessel fishery) will subject such persons to suspension, revocation, or denial of a marine mammal authorization.

NMFS has defined a marine mammal injury as a wound or other physical harm. Signs of injury may include, but are not limited to:

- visible blood flow
- loss of or damage to an appendage or jaw
- inability to use one or more appendages
- asymmetry in the shape of the body or body position
- noticeable swelling or hemorrhage
- laceration, puncture or rupture of eyeball
- listless appearance or inability to defend itself
- inability to swim or dive upon release from fishing gear
- signs of equilibrium imbalance

Any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body will be considered injured regardless of the absence of any wound or other evidence of injury.

### **CAN MARINE MAMMALS BE DETERRED FROM FISHING GEAR AND CATCH?**

Vessel owners are strictly prohibited from intentionally lethally taking marine mammals in the course of commercial fishing operations. An exception is provided for an intentional lethal take imminently necessary in self-defense or to save the life of another person. If a marine mammal is killed in self-defense or to save the life of another person, a report must be filed with NMFS within 48 hours of the end of the fishing trip or, for non-vessel fisheries, within 48 hours of the mortality.

NMFS will be publishing guidelines for the safe deterrence of marine mammals. They will include the following:

- passive deterrence measures, such as nets, fences, or other types of physical barriers, provided the potential for marine mammal entanglement is not increased
- active deterrence measures, such as mechanical or electrical noisemakers, water sprayed from a hose, blunt objects to prod animals, large shielding objects (wood, metal, or fabric) to herd animals, and hazing actions by boat operators.

Deterrence measures should not separate a female and her offspring; break the skin of an animal; result in dislocation of or fracture of bones, limbs, or other appendages; be directed at the head or eyes of an animal; or be used on seals and sea lions hauled out on unimproved private property.

### **IS IT LEGAL TO TAKE ENDANGERED OR THREATENED MARINE MAMMALS?**

NMFS must issue permits for the incidental, but not intentional, taking of marine mammals listed as endangered or threatened under the Endangered Species Act (ESA), if NMFS determines that:

- incidental mortality and serious injury due to commercial fishing will have a negligible impact on the affected species or stock,
- a recovery plan for that species or stock has been developed or is being developed, and
- where required under section 118, a monitoring program has been established, vessels are registered, and a take reduction plan has been developed or is being developed.

NMFS is currently revising its 3-year permits only for participants in fisheries that interact with stocks for which the above criteria have been met.

### **HOW WILL THE DEVELOPMENT OF TAKE REDUCTION PLANS AFFECT FISHING ACTIVITY?**

Take reduction teams are currently being formed and convened with the purpose of developing take reduction plans to assist in the recovery or to prevent the depletion of strategic stocks that interact with Category I and II fisheries. A strategic stock is one which:

- is listed as endangered or threatened under the ESA
- is declining and likely to be listed as threatened under the ESA
- is listed as depleted under the MMPA
- has direct human-caused mortality which exceeds the stock's Potential Biological Removal (PBR) level.

The PBR for a marine mammal stock is the maximum number of animals, not including natural mortalities, that may be removed from that stock, while allowing the stock to reach or maintain its optimum sustainable population.

The immediate goal of take reduction plans is to reduce, within six months of its implementation, the incidental serious injury or mortality of marine mammals from commercial fishing to levels less than PBR. The long-term goal is to reduce, within five years of its implementation, the incidental serious injury and mortality of marine mammals from commercial fishing operations to insignificant levels approaching a zero serious injury and mortality rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. Take reductions teams will consist of

a balance of representatives of the fishing industry and non-resource user interests.

To date, five TRTs have been established. Meetings of each TRT are being professionally facilitated and are open to the public.

### **WHICH FISHERIES WILL CARRY OBSERVERS?**

The MMPA provides NMFS with the authority to place observers on any Category I or II vessel. The purpose of observer programs is to:

- obtain reliable estimates of incidental serious injury and mortality of marine mammals
- determine the reliability of reports submitted by vessel owners and operators
- identify changes in fishing methods or technology that may increase or decrease incidental serious injury or mortality.

Fishing industry representatives will be notified and public meetings held whenever possible to provide advance notification to a fishery that observers will be required. Vessels that are notified of their requirement to carry an observer must comply with regulations regarding advance notification of anticipated fishing activity, cooperation with the observer in the performance of the observer's duties, and, when feasible, the collection and retention of marine mammals incidentally killed. Statutory changes in the 1994 amendments to the MMPA no longer exempt fishers from civil actions if an observer is ill, disabled, injured, or killed in the course of service. Vessel owners may wish to consider liability insurance to protect themselves if an accident occurs.

For more information about any of these programs, see our Web page at:  
[http://www.nmfs.noaa.gov/prot\\_res/mammals/mmmap.html](http://www.nmfs.noaa.gov/prot_res/mammals/mmmap.html)

#### **For more information, or to obtain marine mammal registration or reporting forms, contact your nearest NMFS office:**

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